# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CRIMINAL APPLICATION No. 1625 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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**KISHOREBHAI BATUKBHAI CHAUHAN - Applicant(s)**

**Versus**

**SUB DIVISIONAL MAGISTRATE & 1 - Respondent(s)**

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**Appearance :**

MR RAJESH R DEWAL for Applicant(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**

**Date : 29/12/2005**

**ORAL JUDGMENT**

1. Kishorbhai Batukbhai Chauhan, petitioner has filed this petition under Article 226 of the Constitution of India challenging the order of externment dated 14/6/2005

passed by the Sub Divisional Magistrate, Bhavnagar, respondent no.1 under the Bombay Police Act, and also appellate order dated 30/9/2005 in this behalf. Petition was filed on 23/11/2005.

2. On 28/11/2005, this Court (Coram:K.M.Mehta, J.) has issued rule which was returnable on 19/12/2005 On behalf of respondent, Mr.L.R.Pujari, learned APP appears so, with consent of parties, matter has been taken up for hearing to this Court.

3. The learned advocate for the petitioner stated that though there are several grounds, however he is confining to only one ground of delay in passing the order. In this case, the authority has issued show cause notice on 20/12/2004 under the provisions of Bombay Police Act. Thereafter, the petitioner has filed his reply on 17/2/2005. The petitioner has also examined two persons. Ultimately, the Sub Divisional Magistrate has passed an order on 14/6/2005, externing the petitioner in this behalf. The petitioner has filed appeal and the appellate authority has also confirmed the order of externment vide order dated 30/9/2005.

4.It is the case of the petitioner that that show cause notice was issued on 20/12/2004 whereas the order of externment was passed on 14/6/2005, so there is unreasonable and unexplained delay in passing the order. The authority has not given any reasons in the order as to why there is unreasonable delay in passing the order. The authority also not filed affidavit to explain the delay in this behalf. Even the appellate authority has not considered the said arguments in this behalf though the same was read in the Appeal Memo. For the same, the learned advocate for the petitioner has relied upon the judgment of this Court in the case of Dilaji Bharthaji Vihol v. Deputy Commissioner of Police and another, in Special Criminal Application No.1451 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 1/12/2005 and judgment of this Court (Coram:K.M.Mehta, J.) in Special Criminal Application No.1547 of 2005 decided today.

5.In view of the reasons of the Court, given in case of Dilaji Bharthaji Vihol (supra), as present case is fully covered by the said decision, the petition is allowed. Order of externment dated 14/6/2005 is

quashed and set aside and order dated 30/9/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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